

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

NORMA I. ALTIERY-CORREA

Plaintiff

v.

Civil No. 03-1526(SEC)

K-MART CORPORATION, et al.

Defendants

ORDER

MOTION	RULING
<p>Docket # 8 Motion to Dismiss</p>	<p>GRANTED. Defendants have filed a motion requesting dismissal with prejudice of Plaintiff's claim pursuant to the Confirmation Order issued by the U.S. Bankruptcy Court on April 23, 2003, which became effective on May 6, 2003. In this Confirmation Order the court approved K-Mart's First Amended Joint Plan of Reorganization (Docket # 8). To date, K-Mart's motion to dismiss remains unopposed. On January 22, 2002, K-Mart and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. Then, on August 22, 2003, the instant case was dismissed without prejudice pending conclusion of the bankruptcy proceedings or the lifting of the automatic stay issued by the U.S. Bankruptcy Court (Docket # 2). Per Plaintiff's request, this case was reopened on July 8, 2005 (Docket # 7) and K-Mart's motion to dismiss followed (Docket # 8).</p> <p>Plaintiff filed the instant action seeking damages for a slip and fall on July 26, 2002, that is, after K-Mart filed for bankruptcy but before the aforementioned Confirmation Order. Thus, since Plaintiff's claim surfaced after K-Mart had filed for bankruptcy but before K-Mart emerged from bankruptcy, Plaintiff's claim may be regarded as an administrative claim. 11 U.S.C. § 503. Such administrative claims must be timely filed with the U.S. Bankruptcy Court, as required by the Confirmation Order and Reorganization Plan, otherwise they are disallowed and any claims discharged. <u>See</u> Confirmation Order ¶ 11, 25. Although the Confirmation Order became effective on May 6, 2003, this order allowed an additional forty-five (45) days for the filing of administrative claims (herein the "Bar Date") which, in this case expired on June 20, 2003 (Docket # 8, Ex. 1). K-Mart learned of Plaintiff's claim on August 25, 2003 (Docket # 3). That is, after it had published notice of the Bar Date, and as such, notified its creditors of the pending deadline. Accordingly, Plaintiff was adequately notified of the Bar Date for filing administrative claims with the U.S. Bankruptcy Court. Notwithstanding, Plaintiff failed to file its claim prior to the Bar Date. Thus, she did not preserve her right to claim relief for the alleged July 26, 2002 slip and fall incident. As such, the May 6, 2003 Confirmation Order acts as an injunction issued by the U.S. Bankruptcy Court which bars Plaintiff from seeking relief from K-Mart's alleged liability on that respect. <u>See</u> Confirmation Order ¶ 12. Accordingly, the Court hereby GRANTS Defendants' motion to dismiss with prejudice. Judgment shall be entered accordingly.</p>

DATE: February 2, 2006

S/ *Salvador E. Casellas*
SALVADOR E. CASELLAS
U.S. Senior District Judge